

111TH CONGRESS
1ST SESSION

H. R. 788

To provide a safe harbor for mortgage servicers who engage in specified mortgage loan modifications, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2009

Mr. KANJORSKI (for himself, Mr. CASTLE, and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To provide a safe harbor for mortgage servicers who engage in specified mortgage loan modifications, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SERVICER SAFE HARBOR.**

4 (a) SAFE HARBOR.—

5 (1) LOAN MODIFICATIONS AND WORKOUT
6 PLANS.—Notwithstanding any other provision of
7 law, and notwithstanding any investment contract
8 between a servicer and a securitization vehicle or in-
9 vestor, a servicer that acts consistent with the duty

1 set forth in section 129A(a) of Truth in Lending Act
2 (15 U.S.C. 1639a) shall not be liable for entering
3 into a loan modification or workout plan with re-
4 spect to any such mortgage that meets all of the cri-
5 teria set forth in paragraph (2)(B) to—

6 (A) any person, based on that person’s
7 ownership of a residential mortgage loan or any
8 interest in a pool of residential mortgage loans
9 or in securities that distribute payments out of
10 the principal, interest and other payments in
11 loans on the pool;

12 (B) any person who is obligated to make
13 payments determined in reference to any loan
14 or any interest referred to in subparagraph (A);
15 or

16 (C) any person that insures any loan or
17 any interest referred to in subparagraph (A)
18 under any law or regulation of the United
19 States or any law or regulation of any State or
20 political subdivision of any State.

21 (2) ABILITY TO MODIFY MORTGAGES.—

22 (A) ABILITY.—Notwithstanding any other
23 provision of law, and notwithstanding any in-
24 vestment contract between a servicer and a
25 securitization vehicle or investor, a servicer—

1 (i) shall not be limited in the ability
2 to modify mortgages, the number of mort-
3 gages that can be modified, the frequency
4 of loan modifications, or the range of per-
5 missible modifications; and

6 (ii) shall not be obligated to repur-
7 chase loans from or otherwise make pay-
8 ments to the securitization vehicle on ac-
9 count of a modification, workout, or other
10 loss mitigation plan for a residential mort-
11 gage or a class of residential mortgages
12 that constitute a part or all of the mort-
13 gages in the securitization vehicle,

14 if any mortgage so modified meets all of the cri-
15 teria set forth in subparagraph (B).

16 (B) CRITERIA.—The criteria under this
17 subparagraph with respect to a mortgage are as
18 follows:

19 (i) Default on the payment of such
20 mortgage has occurred or is reasonably
21 foreseeable.

22 (ii) The property securing such mort-
23 gage is occupied by the mortgagor of such
24 mortgage.

1 (iii) The servicer reasonably and in
2 good faith believes that the anticipated re-
3 covery on the principal outstanding obliga-
4 tion of the mortgage under the particular
5 modification or workout plan or other loss
6 mitigation action will exceed, on a net
7 present value basis, the anticipated recov-
8 ery on the principal outstanding obligation
9 of the mortgage to be realized through
10 foreclosure.

11 (3) APPLICABILITY.—This subsection shall
12 apply only with respect to modifications, workouts,
13 and other loss mitigation plans initiated before Jan-
14 uary 1, 2012.

15 (b) REPORTING.—Each servicer that engages in loan
16 modifications or workout plans subject to the safe harbor
17 in subsection (a) shall report to the Secretary on a regular
18 basis regarding the extent, scope and results of the
19 servicer’s modification activities. The Secretary shall pre-
20 scribe regulations specifying the form, content, and timing
21 of such reports.

22 (c) DEFINITION OF SECURITIZATION VEHICLES.—
23 For purposes of this section, the term “securitization vehi-
24 cle” means a trust, corporation, partnership, limited liabil-
25 ity entity, special purpose entity, or other structure that—

1 (1) is the issuer, or is created by the issuer, of
2 mortgage pass-through certificates, participation cer-
3 tificates, mortgage-backed securities, or other similar
4 securities backed by a pool of assets that includes
5 residential mortgage loans; and
6 (2) holds such mortgages.

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